

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DR SYSTEMS, INC.,)	Case No. 08cv669-H (BLM)
)	
Plaintiff,)	NOTICE AND ORDER FOR EARLY
)	NEUTRAL EVALUATION CONFERENCE
v.)	IN PATENT CASE
)	
EASTMAN KODAK CO.,)	
)	
Defendants.)	
_____)	
And Related Counter-Claims)	
_____)	

IT IS HEREBY ORDERED that an Early Neutral Evaluation ("ENE") of your case will be held on **June 19, 2008** at **1:30 p.m.** in the chambers of the Honorable Barbara L. Major, United States Magistrate Judge, **940 Front Street, Suit 5140, San Diego, California 92101.**

The following are **mandatory** guidelines for the parties preparing for the Early Neutral Evaluation Conference.

1. **Purpose of Conference:** The purpose of the ENE is to permit an informal discussion between the attorneys, parties, and the settlement judge of every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference discussions will be informal, off the record, privileged, and confidential. Counsel for any

1 non-English speaking party is responsible for arranging for the
2 appearance of an interpreter at the conference.

3 2. **Personal Appearance of Parties Required:** All parties,
4 adjusters for insured defendants, and other representatives of a party
5 having full and complete authority to enter into a binding settlement,
6 and the principal attorneys responsible for the litigation, must be
7 present **in person** and legally and factually prepared to discuss
8 settlement of the case. Counsel appearing without their clients
9 (whether or not counsel has been given settlement authority) will be
10 cause for immediate imposition of sanctions and may also result in the
11 immediate termination of the conference.

12 Unless there are **extraordinary circumstances**, persons required to
13 attend the conference pursuant to this Order shall not be excused from
14 personal attendance. **Requests for excuse from attendance for**
15 **extraordinary circumstances shall be made in writing at least three (3)**
16 **court days prior to the conference.** Failure to appear at the ENE
17 conference will be grounds for sanctions.

18 3. **Full Settlement Authority Required:** In addition to counsel
19 who will try the case, a party or party representative with **full**
20 **settlement authority**¹ must be present for the conference. In the case
21 _____

22 ¹ "Full settlement authority" means that the individuals at the settlement
23 conference must be authorized to explore settlement options fully and to agree at that
24 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph
25 Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered
26 discretion and authority" to change the settlement position of a party. Pitman v.
27 Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring
28 a person with unlimited settlement authority to attend the conference contemplates that
the person's view of the case may be altered during the face to face conference. Id.
at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's
Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 of a corporate entity, an authorized representative of the corporation
2 who is not retained outside counsel must be present and must have
3 discretionary authority to commit the company to pay an amount up to the
4 amount of the Plaintiff's prayer (excluding punitive damages prayers).
5 The purpose of this requirement is to have representatives present who
6 can settle the case during the course of the conference without
7 consulting a superior. Counsel for a government entity may be excused
8 from this requirement so long as the government attorney who attends the
9 ENE conference (1) has primary responsibility for handling the case, and
10 (2) may negotiate settlement offers which the attorney is willing to
11 recommend to the government official having ultimate settlement
12 authority.

13 4. **Confidential ENE Statements Required:** No later than five (5)
14 court days prior to the ENE, the parties shall submit confidential
15 statements no more than ten (10) pages² in length directly to the
16 chambers of the Honorable Barbara L. Major. **These statements shall not**
17 **be filed or served on opposing counsel.** Each party's confidential
18 statement must include the following:

19 a. A brief description of the case, the claims and/or
20 counterclaims asserted, and the applicable defenses or position
21 regarding the asserted claims;

22 b. A specific and current demand or offer for settlement
23 addressing all relief or remedies sought. If a specific demand or offer
24 for settlement cannot be made at the time the brief is submitted, then
25 the reasons therefore must be stated along with a statement as to when
26 the party will be in a position to state a demand or make an offer; and

27 c. A brief description of any previous settlement
28

² The parties shall not append attachments or exhibits to the ENE statement.

1 negotiations, mediation sessions, or mediation efforts.

2 General statements that a party will "negotiate in good faith" is
3 not a specific demand or offer contemplated by this Order. It is
4 assumed that all parties will negotiate in good faith.

5 In addition, parties are encouraged to include in the statement or
6 bring to the ENE appropriate demonstrative aids to assist the court in
7 understanding the invention(s) at issue in the litigation.

8 **5. New Parties Must be Notified by Plaintiff's Counsel:**
9 Plaintiff's counsel shall give notice of the ENE to parties responding
10 to the complaint after the date of this notice.

11 **6. Case Management Under the Amended Federal Rules and the Local**
12 **Patent Rules:** In the event the case does not settle at the ENE, the
13 Court will conduct an Initial Case Management Conference. In
14 preparation for this conference, the parties must

15 a. Meet and confer pursuant to Fed. R. Civ. P. 26(f) no
16 later than **twenty-one (21) days before the ENE.**

17 b. File a joint Case Management Statement with Magistrate
18 Judge Barbara L. Major **seven (7) days before the ENE.** The statement
19 must address all of the topics set forth in Rule 26 as well as the
20 following:

21 i. Any proposed modification of the deadlines provided
22 for in the Patent Local Rules, and the effect of any such modification
23 on the date and time of the Claim Construction Hearing, if any;

24 ii. Whether the court will hear live testimony at the
25 Claim Construction Hearing;

26 iii. The need for and specific limitations on discovery
27 relating to claim construction, including depositions of percipient and
28 expert witnesses;

iv. The order of presentation at the Claim Construction Hearing;

v. Any proposed modifications to the limitations on discovery imposed under the Federal Rules of Civil Procedure or by local rule; and

vi. Any issues or agreements relating to electronically stored information or protective orders.

c. Exchange initial disclosures pursuant to Rule 26(a)(1)(A-D) no later than seven (7) days prior to the ENE.

7. Requests to Continue an ENE Conference: Local Patent Rule 2.1.a requires that an ENE take place within sixty (60) days of the filing of the first answer. Requests to continue ENEs are rarely granted. However, the Court will consider formal, written *ex parte* requests to continue an ENE conference when extraordinary circumstances exist that make a continuance appropriate. In and of itself, having to travel a long distance to appear in person is not "extraordinary." **Absent extraordinary circumstances, requests for continuances will not be considered unless submitted in writing no less than seven (7) days prior to the scheduled conference.**

DATED: May 8, 2008



BARBARA L. MAJOR
United States Magistrate Judge

COPY TO:

HONORABLE MARILYN L. HUFF
U.S. DISTRICT JUDGE

ALL COUNSEL

NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that a U.S. Magistrate Judge of this district may, upon the consent of all parties, on Form 1A available in the Clerk's Office, conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Counsel for the plaintiff shall be responsible for obtaining the consent of all parties, should they desire to consent.

You should be aware that your decision to consent or not to consent is entirely voluntary and should be communicated solely to the Clerk of Court. Only if all parties consent will the Judge or Magistrate Judge to whom the case has been assigned be informed of your decision.

Judgements of U.S. Magistrate Judges are appealable to the U.S. Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure.